

DEPARTMENT OF STATE REVENUE

Revenue Ruling #2000-08 ST

September 29, 2000

Notice: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

Sales/Use Tax – Application of sales/use tax for a contractor who purchases goods for exempt and non-exempt jobs.

Authority: 45 IAC 2.2-3-8(b), 45 IAC 2.2-3-12(a)&(b), IC 6-2.5-8-1, and IC 6-2.5-8-8

The taxpayer requests the Department to rule on the taxability of purchases in large quantities for use in exempt and non-exempt jobs.

STATEMENT OF FACTS

The taxpayer is an Indiana construction company and a highway contractor where approximately 80% of its work is for either the Indiana Department of Transportation or other state or local government agencies. The taxpayer pays sales tax on all its "Bridge Division" inventory, which is primarily truckload quantities of steel piling ultimately incorporated into the construction of tax-exempt projects. However, a small quantity, approximately 20%, is used for other taxable jobs.

The taxpayer requests Departmental review of the application of sales/use tax to the purchases of the truckload quantities of steel piling. Specifically, the taxpayer requests a ruling on whether or not the purchases can be acquired exempt from sales tax where the taxpayer will pay use tax when the inventory is eventually incorporated into taxable jobs.

DISCUSSION

45 IAC 2.2-3-8(b) states:

All construction material purchased by a contractor is taxable either at the time of purchase, or if purchased exempt (or otherwise acquired exempt) upon disposition

unless the ultimate recipient could have purchased it exempt.

In this case, the steel pilings, which are fungible, and therefore impossible to determine exempt from non-exempt, are purchased by the taxpayer subject to sales/use tax at either the time of purchase or when they are incorporated into a project for an entity subject to sales/use tax. The purchases are not subject to sales/use tax when they are incorporated into a project for an entity that is not subject to sales/use tax; in this case, a government agency.

45 IAC 2.2-3-12(a)&(b) state:

- a) Tangible personal property purchased to become a part of an improvement to real estate under a contract with an organization entitled to exemption is eligible for exemption when purchased by the contractor.
- b) In order to be exempt on such purchases, the contractor must be registered as a retail merchant, must obtain an exemption certificate from the exempt organization, and must issue an exemption certificate to his supplier.

Again, the steel pilings are exempt from sales/use tax when incorporated into a project for an entity that is exempt. In order for the purchases to be exempt, the taxpayer must be a registered retail merchant pursuant to IC 6-2.5-8-1. Additionally, the taxpayer must obtain a form ST-105 from the entity that it is performing the service for and provide an ST-134 to the supplier of the steel pilings.

The form ST-105 is a general exemption certificate for the state of Indiana and is required to be supplied by a purchaser to a seller in exempt transactions pursuant to IC 6-2.5-8-8. An ST-134 is a similar exemption form used by contractors in exempt purchases.

RULING

The Department rules that the taxpayer may purchase the steel pilings without paying sales tax, so long as it pays use tax on the steel pilings when they are incorporated into a taxable project.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax

decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in statute, regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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